

SALEM PLANNING AND ZONING COMMISSION

(PZC)

REGULAR MEETING

March 19, 2013

7:00

Present: R. Amato, D. Bingham (arrives at 7:04), V. Smith, W. Volberg,
K. Buckley, G. Fogarty, Alt, R. Savalle, M. Darling, Alt., M. Chinatti, Town
Planner/ZEO,

Absent: G. Walter, H. Green Alt.,

Guests See File Copy

CALL TO ORDER: R. Amato called the meeting to order at 7:00.
G. Fogarty seated for D. Bingham. D. Bingham arrives to take his seat at 7:04.
M. Darling seated for G. Walter

ADDITIONS TO THE AGENDA:

**M/S/C (Buckley/Volberg) to add, "and possible action", to the Public Hearing
agenda item. Vote: Approved Unanimously**

PUBLIC HEARING: **SE #13-01-01** – Horace Lindo, owner, for property at 348 New London Road.
**Special Exception application for multiple family development, per Section 15
of the Zoning Regulations.**

R. Amato opened the Public Hearing at 7:06 and read the legal notice of the
Public Hearing.

The Commission acknowledged that an abutter of the applicant spoke during
the Public Comment portion of the regular Planning and Zoning meeting on
February 19, 2013 and referenced issues that were coming before a Planning
and Zoning Public Hearing which had not yet opened. The Commission asked
the applicant if he had any issues or concerns with going ahead with the Public
Hearing. The applicant stated he would like to go ahead with the Public
Hearing.

R. Amato read the ZEO report regarding the pertinent issues of the application.

R. Amato asked the applicant if he had any problems with the presence of R.
Savalle and R. Amato sitting on the Commission for the Public Hearing due to

the fact that they serve together at the Gardner Lake Fire Dept. They offered to recuse themselves from the hearing. The applicant did not see a conflict of interest and expressed confidence that the two members could make an unbiased decision.

R. Amato read the Public Hearing procedures.

Harry Heller, attorney for H. Lindo the applicant addressed the Commission. H. Heller stated it was his opinion the Net Buildable Area (NBA) is not applicable to this application.

Heller states 3.2.1 provides a complete exemption for lots created after the date of 2003 in subdivisions or resubdivisions containing three lots or less. It is an exemption for the lot in its entirety. The more specific sections are general bulk regulations for specific uses in the residential zones. They determine what standard the commission has to apply in the event the NBA requirement is applicable to the application but, if it is exempt because the use is occurring on a lot in a subdivision of 3 lots or less, that occurred after the date of enactment of the regulation, the lot itself is exempt and those standards do not apply.

Heller cited a state statute called the, "Plain Language Rule". It states that when interpreting a statute or regulation the court shall give plain meaning interpretation to the statute or regulation unless that plain language reading of the statute or regulation when considered in relation to the other statutes or regulations dealing with the same subject matter would lead to absurd results.

He stated that the interpretation of Steve Byrne is internally inconsistent with other regulations in the zoning and subdivision regulations. He stated 4.6 cannot be reconciled with 3.2.1

Heller submitted into the record the Wheaton Subdivision map (map 425, slide 394A) approved by the Planning and Zoning November 13 2008. He called out note 10 on the plan stating, "NBA was not shown since this is the first subdivision of the property and there are fewer than three lots. See section 3.2.1 of the Zoning Regulations." He stated it could not possibly be approved under 4.6 of the regulations if you adopt Att. Byrne opinion.

He stated that section 3.2.1 creates an exception for subdivisions with lots of three or less which were received and approved after the date of the Commission adopting the NBA requirement. He stated this is consistent with the action the Commission took in regards to the Wheaton Subdivision.

Heller went over the findings in 11.4 of the Zoning Regulations. In each one he stated how the application meets all the findings from 11.4.1 thru 11.4.8. He

stated that in finding 11.4.1 the application is consistent with the POCD, specifically section 8, affordable housing and the need for rental properties in Salem.

He stated a maintenance agreement for common driveways was filed in 2008. The proposed use for 4 potential units is less than the 6 units authorized by the regulations. They have filed for a modification for the special exception for the common driveway.

Wess Wentworth, soil scientist and engineer of record for the applicant. He stated it is a 3.5 acre piece of land, there is a 2800 sq.ft building proposed with septic and well on site. He stated all were outside the upland review. The driveway will be paved and all the water will be dispersed naturally from the impervious surfaces over the soil and filtered into the wetlands. He stated there is only 5.8% pervious surface for the project. He stated there was a buffer permit approved by the WEO.

Wentworth stated that there is 83,000 sq. ft. of buildable area and the regulations call for 80,000 sq. ft. He stated that the horizontal geometry which is required under the regulations does not work for the lot for NBA.

D. Bingham stated that the parallelogram required in the zoning regulations is actually much less stringent than many other shapes that could have been used.

Wentworth showed on the site plan that the project almost fits into the required dimensions except that in two corners there are wetlands, but that it is very close.

S. Byrne stated that the NBA shows up throughout the Zoning Regulations and is defined in section 2, and carves out a general exception, in section 15. He states that it always speaks to "lots" but, in 15.2.11 the word, "lot" does not appear, it does not care when the lot was created, just what goes on the lot.

The Wheaton Subdivision applied to single family homes and it was reasonable to assume that single family homes would have less impact than a multi-family home(s).

S. Byrne stated there is no waiver provision in the NBA, therefore the Commission has to go by what is in their regulations. Byrne stated the applicant could go to the Zoning Board of Appeals for a variance. He stated the proposal was close to size and shape but does not meet the letter of the regulation.

H. Lindo stated that the Town has an obligation to write regulations that people can understand. He stated he read the regulations and did not see where he was prohibited from putting in a multi-family structure.

S. Byrne stated 15.2.11 speaks to what is going on the lot, not, when the lot was created. He stated in 4.6 the regulations speak to, "any new lot", while 15.2.1 speaks to any new multi family dwelling. He thought that was significant on how those two were treated, not when the lot was created but what is going on the lot.

M. Chinatti stated the Fire Marshal has not provided written comments to the application and the Building Official informed the applicant that the wording describing the structure as a multi-family home needs to be changed to townhouse because of ADA guidelines.

M/S/C (Amato/Buckley) to close the Public Hearing at 8:23. Vote: Approved Unanimously.

The Commission discussed the application.

V. Smith thought the application did not violate the "spirit" of the regulation.

D. Bingham stated the Commission does not have legal authority to approve the application. He stated everyone else has to live by the regulations. He is very sympathetic to the project, especially for affordable housing.

W. Volberg asked if it was possible that the ZBA will approve the application.

R. Amato stated that the Commission cannot get around 11.4.1.

R. Savalle stated the application meets everything but NBA

K. Buckley stated that the regulations should be clear. K. Buckley asked if the Commission were to approve the application then follow up to clean up the regulations.

G. Fogarty thought the Commission has to live with the regulations they have written and if they need to be corrected that would happen in a future meeting.

K. Buckley stated it was a question of which regulation they should go with, either the one with the exception or the one without the exception. If they went with the one that allows the exception then they would be living with the regulation and use that one for the reason to approve the application.

D. Bingham thought there was no contradiction in the regulations.

M/S/C (Bingham/Savalle) to deny application SE # 13-01-01 for multifamily development due to the inability of lot to comply with section 15.2.11.

The members discussed the NBA and shape and configurations of the land.

S. Byrne states 11.4.1 brings you back to NBA and the Commission has to deal with what is in the regs now. If the Commission thinks the regulation needs to be changed or fine-tuned after, then they can look at that. He stated the applicant can go to the ZBA.

V. Smith asked where in the regs does it talk about the shape of the NBA. He was referred to page 8, Section 2.

Vote: Approved. In favor-Bingham, Buckley, Savalle, Volberg, Darling. Opposed-Smith. Abstaining-Amato

PETITIONERS: None

PUBLIC COMMENT: None

M/S/C (Amato/Volberg) to move New Business before Old Business. Vote: Approved Unanimously

K. Lyden spoke to the Commission and thanked MaryAnn Chinatti for all she had done for the Town and the Commission. He explained why he went to SECCOG for a Planner and that it was a 6 month trial.

NEW BUSINESS Introduction of Mr. Richard Serra, Senior Planner at SECCOG

R. Serra introduced himself and his qualifications. He stated it was his goal to help the town with the transition and he would like to get a sense of what the town would like him to do. He stated he specializes in land use.

APPROVAL OF MINUTES OF PREVIOUS MEETING(S):

1. February 19, 2013 Regular Meeting

M/S/C (Savalle/Volberg) to approve the February 19, 2013 minutes as presented. Vote: Approved Unanimously

2. February 26, 2013 Regular Meeting

M/S/C (Bingham/Darling) to approve the February 26, 2013 minutes as presented. Vote: Approved Unanimously

OLD BUSINESS

1. Status of the Planner Position

K. Buckley stated her concerns about the interim plan for the planner position and the coverage for the town.

ENFORCEMENT OFFICERS REPORT/INLAND WETLANDS AND CONSERVATION COMMISSION REPORT:

CLEAR Advanced Training Notice, April 20th.

PLUS/DELTAS: The Commission discussed the positive and negative aspects of the meeting.

CORRESPONDENCE: None

ADJOURNMENT:

M/S/C (Bingham/Volberg) to adjourn at 9:21 PM. Vote: Approved Unanimously.

Respectfully Submitted,

Sue Spang

Recording Secretary

approved